

STATE OF MICHIGAN
COURT OF APPEALS

HARRY T. BROWN, Personal Representative of
the Estate of REGINA EDWARDS RANDOLPH,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, AKILAH MARIE
LAWRENCE, and ROCKER'S, INC., d/b/a
SUZ'S BAR & GRILL,

Defendants-Appellees.

UNPUBLISHED
May 21, 2009

No. 284325
Oakland Circuit Court
LC No. 2007-985426-NZ

Before: Wilder, P.J., and Meter and Fort Hood, JJ.

WILDER, P.J., (*concurring*).

I concur in the result in this matter. I write separately to note that *Romska v Opper*, 234 Mich App 512, 515; 594 NW2d 853 (1999), (upon which defendants rely in part for the proposition that a release may bar claims against parties that it does not specifically identify and who failed to tender any consideration), is a lesser authority and less on point compared to our Supreme Court's decision in *Koenig v South Haven*, 460 Mich 667, 677; 597 NW2d 99 (1999). In *Koenig*, the Supreme Court, interpreting the third-party beneficiary statute, MCL 600.1405,¹

¹ MCL 600.1405, states in relevant part:

Any person for whose benefit a promise is made by way of contract, as hereinafter defined, has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promisee.

(1) A promise shall be construed to have been made for the benefit of a person whenever the promisor of said promise has undertaken to give or to do or refrain from doing something directly to or for said person.

concluded that a person is a third-party beneficiary of a contract only when the contract reveals that the promisor undertook the promise directly for the benefit of the third party.

In *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 427; 670 NW2d 651 (2003), the Supreme Court elaborated:

A person is a third-party beneficiary of a contract only when that contract establishes that a promisor has undertaken a promise directly to or for that person. MCL 600.1405; *Koenig v South Haven*, 460 Mich 667, 677; 597 NW2d 99 (1999). By using the modifier directly, the Legislature intended to assure that contracting parties are clearly aware that the scope of their contractual undertakings encompasses a third party, directly referred to in the contract, before the third party is able to enforce the contract. *Id.* An objective standard is to be used to determine, from the form and meaning of the contract itself, *Kammer Asphalt v East China Twp*, 443 Mich 176, 189; 504 NW2d 635 (1993) (citation omitted), whether the promisor undertook to give or to do or to refrain from doing something directly to or for the person claiming third-party beneficiary status

In the instant case, nothing in the release specifically identifies State Farm, Akilah Marie Lawrence, or Rocker's Inc., d/b/a Suzs Bar & Grill, as intended third-party beneficiaries of the plaintiff's release of claims, damages, actions, causes of action and suits that could be brought against Tramone Chasen. Reviewing the release objectively, then, the language "his successors, assigns, and all other persons, insurers, firms or corporations" is not in my judgment a sufficiently direct promise on the part of the plaintiff to bar an uninsured motorist benefits claim against State Farm or a negligence action against Ms. Lawrence or Rocker's, Inc.

/s/ Kurtis T. Wilder